

IN THE LABOUR APPEAL COURT OF LESOTHO

HELD AT MASERU

LAC/A/03/11

In the matter between:

LEBOHANG THAMAE

APPELLANT

AND

WATER AND SEWERAGE AUTHORITY

1ST RESPONDENT

COURT PRESIDENT LABOUR COURT

2ND RESPONDENT

CLERK OF COURT LABOUR COURT

3RD RESPONDENT

CORAM: THE HONOURABLE MR JUSTICE K.E. MOSITO AJ.

ASSESSORS: Mr M. Mphatsoe

Mrs L. Ramashamole

Heard on: 18th JANUARY 2012Delivered on: 30TH JANUARY 2012**SUMMARY**

Appeal from the Labour Court - Appellant complaining that Labour Court erred in not finding that letter of dismissal showed that he was dismissed before a date of disciplinary hearing –letter indicating that Appellant was dismissed effect from date of receiving the letter. Appellant failing to adduce evidence as to when he received the letter – no case made out by Appellant.

Appellant complaining that Labour Court erred in holding that matter had not prescribed – Labour Court having no jurisdiction to entertain the matter where time limits for presenting the matter had passed without condonation.

Appeal dismissed and no order as to costs.

JUDGEMENT

MOSITO AJ

1. This is an appeal against the judgment of the Labour Court in which the Court dismissed the application filed by the Appellant on account of having been filed long after the lapse of time permitted by the law. The Appellant herein was admittedly employed by the respondent on the 1st November, 2004. He was employed as a labourer responsible for fixing pipes, digging trenches, materials gathering and filing. He was responsible to Mr Putsoane who in turn was responsible to the Manager for Water Production Mr Mohapi Jessie.
2. On or around 12th September, 2007 Appellant appeared before a disciplinary enquiry charged with insubordination and habitual absenteeism. Evidence was led showing that Appellant came late to work without bothering to furnish explanation for his lateness. At work he would just sit down and not do the work. Putsoane called the Manager, Mr Jessie on at least two occasions to come and witness the behaviour of Appellant, who would be sitting down during working hours while others are doing the work. It appears the Appellant had a number of complaints about how he should be treated and paid.

Several attempts were made to speak to the Appellant to stop engaging in a number of misconducts privately to get him change his behaviour but he could not listen.

3. As Appellant continued to absent himself despite reprimands, Mr Putsoane recommended that disciplinary action be taken. He was charged as aforesaid, found guilty and dismissed. The date of hearing was admittedly 12th day of September, 2007. He was dismissed on the 10th October, 2007, even though the letter wrongly cited the date as 7th September, 2007, a date earlier than the admitted date of hearing.
4. Appellant referred a dispute of unfair dismissal to the DDPR which was concluded on the 6th October, 2008. The award which confirmed the dismissal as procedurally and substantively fair was handed down on the 9th of October, 2008. Appellant applied for the review of that award on the 17th of March, 2010, some one year and five months after the handing down of the Award. In his Founding Affidavit Appellant says he received the award on the same date that it was handed down vide paragraph 4 of the Founding Affidavit.
5. Appellant's only ground of review which in effect is an appeal is based on the fact that the letter of dismissal says it was written on the 9th of September, 2007. He contended at the arbitration that this means he was dismissed prior to the date of the hearing, which was the 12th of September, 2007. Arbitrator accepted the evidence of the author of the letter Mrs Puseletso Rangoako who said under oath that the date of the 9th September was a typographical error. The Labour Court held that there was no irregularity committed by receiving such evidence and relying on it. It also held that Appellant's reliance on the finding that letter was written on the 9th of September was an error. He was

clutching at straws and fell far short of saving him from sinking. It could not constitute a legitimate ground of review which could by any stretch of imagination and logic not be found to render the Award reviewable. For this reason the Court found that it would be a futile exercise to seek to extend leniency to the Appellant by allowing him indulgence to make a belated application for condonation, because on the papers filed of record, he did not have prospects of success on the merits. Accordingly, the application was dismissed on account of having been filed long after the lapse of time permitted by the law.

6. Appellant has now come before this Court on appeal on the following grounds;

1. The Leaned President erred and or misdirected himself in holding that the matter had prescribed despite the fact that Respondent failed to prove the same.
2. The Learned President erred and or misdirected himself in holding that Appellant was dismissed on or after the 12th September, 2007 despite the fact that the letter of dismissal clearly stipulates that he was dismissed on the 9th of September, 2007.

7. Regarding the first ground, it is common cause that the matter had been brought beyond the time limits prescribed in the law. It was incumbent upon the Appellant to have made an application for condonation for the late institution or referral of his claim. This he did not do. The Labour Court would still have had no jurisdiction to entertain a matter presented to it beyond the time limits prescribed by the law without an application for condonation. In the result there is no substance in this complaint and it cannot succeed.

8. Regarding the second ground it is true that the letter is dated 9th September, 2007. The disciplinary hearing took place on 12th September, 2007. However in that letter the following words appear:

“Management has therefore reached a decision to dismiss you from the employ of the authority effectively from when you receive this letter”. (underlining added).

The problem is that Appellant has not been able to prove the date on which he received the letter. It was not his case that he received the letter before the disciplinary hearing. It was incumbent upon Appellant to prove the date on which he received the letter as that was the date on which the dismissal was to take effect. There is therefore no merit in the contention that the Learned President erred and or misdirected himself in holding that Appellant was dismissed on or after the 12th September, 2007 despite the fact that the letter of dismissal clearly stipulates that he was dismissed on the 9th of September, 2007. This ground therefore has no merit.

9. It is clear therefore that this appeal cannot succeed and falls to be dismissed. It is accordingly dismissed. Since we were not addressed on the issue of costs, and none of the parties asked us to give costs, there will be no order as to costs.
10. This is the unanimous decision of the Court.

K.E.MOSITO AJ

Judge of the Labour Appeal Court

For Appellant: Adv. P. S. Ntsene

For Respondent: Adv. P. Masoabi